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COUNTY OF SAN LUIS OBISPO
DEPARTMENT OF PLANNING AND BUILDING
STAFF REPORT

PLANNING COMMISSION

MEETING DATE May 25, 2006		CONTACT/PHONE Bill Robeson, Senior Planner 805-781-5607		APPLICANT Department of Planning and Building		FILE NO. N/A	
SUBJECT Hearing to consider a request for interpretation by the Department of Planning and Building regarding the establishment of Medical Marijuana Dispensaries. The Department of Planning and Building has determined that Medical Marijuana Dispensaries are most similar to Health Care Services. In researching Medical Marijuana Dispensaries, it became evident that Title 22 Inland Land use Ordinance and Title 23 Coastal Zone Land Use Ordinance did not have a comprehensive definition and use category to fit Medical Marijuana Dispensaries into. The contentiousness, precedent setting nature and the ability to move towards a countywide policy, most appropriately requires an interpretation from the Planning Commission.							
RECOMMENDED ACTION Adopt the resolution upholding the appeal and reversing the decision of the Director of Planning and Building and Uphold the appeal based on the finding(s) listed in Exhibit A and provide Staff with direction regarding the formulation of Title 22, Land Use Ordinance and Title 23, Coastal Zone Land Use Ordinance regulatory standards that will be applied to the entire County of San Luis Obispo.							
ENVIRONMENTAL DETERMINATION Not required							
LAND USE CATEGORY Countywide		COMBINING DESIGNATION N/A		ASSESSOR PARCEL NUMBER Countywide		SUPERVISOR DISTRICT(S) Countywide	
PLANNING AREA STANDARDS: N/A							
EXISTING USES: N/A							
SURROUNDING LAND USE CATEGORIES AND USES: <i>North: N/A</i> <i>South: N/A</i> <i>East: N/A</i> <i>West: N/A</i>							
OTHER AGENCY / ADVISORY GROUP INVOLVEMENT: Sheriff's Department, Public Health Department, County Counsel, Templeton Advisory Group							
TOPOGRAPHY: N/A				VEGETATION: N/A			
PROPOSED SERVICES: N/A				ACCEPTANCE DATE: N/A			
ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT: COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242							

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Planning Commission - May 8, 2006

Interpretation Procedure Request: Department of Planning and Building

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SUBJECT: REQUEST FOR INTERPRETATION OF THE APPROPRIATE LAND USE FOR A MEDICAL MARIJUANA DISPENSERY

Summary of Issue

This is a hearing to consider an interpretation of the Land Use Ordinance, Title 22 of the County Code, using the provisions of Section 22.02.030. The question is where, in Table 2-2 (the allowable use table), a Medical Marijuana Dispensary is classified, and therefore within which land use categories it can be located.

The department has reviewed the various land use types provided in Table 2-2 and determined that the proposed use was most similar to a "Health Care Service" as defined by Article 8 of the Land Use Ordinance, Title 22 of the County Code. This determination was made in response to a specific proposal for a business license.

The site where the Medical Marijuana Dispensary is proposed is within the Commercial Service land use category and is located at 3850 Ramada Drive inside the Templeton Urban Area. However, Health Care Services are not allowed within the Commercial Service land use category.

An appeal of the Director's determination was submitted. However, the department proposed that we use the Interpretation Procedure as provided in Section 22.02.030. The appeal has subsequently been withdrawn.

Interpretation Procedure

Section 22.30.030 states:

If questions arise from persons or bodies charged with administering this Title about its content or application, the Commission shall ascertain all pertinent facts, and by resolution set forth its findings and interpretation. The resolution shall be forwarded to the Board, which shall consider the findings and interpretation of the Commission and render a final decision and interpretation on the matter. Thereafter the interpretation of the Board shall prevail.

In researching Medical Marijuana and the associated dispensaries, it became evident several land uses have aspects of the proposed use. When a use is not specifically set forth in the Land Use Ordinance, the Department is left to determine the appropriate land use. This would need to occur in both Title 22 – Table 2-2 (the Land Use Ordinance) and in Coastal Table “O” (Coastal Zone Framework for Planning). This may also involve the need to establish specific siting criteria applicable to this use within the selected land use type.

Given the contentiousness, precedent setting nature and the need to move towards a countywide policy, staff believes that an interpretation from the Planning Commission is an appropriate course. Your recommendation will be forwarded to the Board, which will consider the findings and interpretation of the Commission and render a final decision and interpretation on the matter.

BACKGROUND:

On February 2, 2006, applicant Dylan Hyde, and property owner Kent Connella, applied for a business license to establish a Medical Marijuana dispensary. On February 6, 2006 the County Department of Planning and Building sent a letter to the applicants outlining the reasons why a business license could not be issued. The letter stated, “...the distribution of medical cannabis is a medical service use that is encompassed by the definition of “Health Care Services” in the San Luis Obispo County Code – Title 22, Land Use Ordinance.” On February 22, 2006, Mr. Hyde and Mr. Connella filed an appeal and submitted a letter justifying their position. Mr. Hyde is appealing the determination that the proposed Medical Marijuana dispensary is a “Health Care Use”. The appeal has since been withdrawn. However, the appeal was noticed and therefore the withdrawal will be handled as a separate matter.

While performing supplementary research regarding Medical Marijuana dispensaries along with the application of Title 22, it became apparent that the proposed use could not be comprehensively defined. In other words, the characteristics of Medical Marijuana dispensaries (an unlisted use) were analyzed and compared to listed uses and their definitions from Title 22. It was found that there were several uses that incorporate aspects of the service provided at the dispensaries, including as Health Care Services, Offices and Pharmacies (which falls under General Retail use). The determination that Medical Marijuana dispensaries were equivalent to only one of these uses could not be made and staff concluded that the use of the Interpretation Procedure as provided by Section 22.02.030 was the appropriate way to resolve this issue. We informed Mr. Hyde that we would be processing the interpretation request to your Commission and that the appeal was no longer needed.

Summary of the operation of Medical Marijuana Dispensaries

The relationship between an "Attending physician", "Primary caregiver" and a "Qualified patient" as defined by Section 11362.7 (a), (d) and (f) respectively, is basic foundation for Medical Marijuana Dispensaries. On the whole, a qualified patient (someone in need of medical marijuana) designates a proprietor of a Medical Marijuana Dispensary or patients as their primary caregiver (an individual who provides the medical marijuana to the patient). This is all based on the attending physician's determination that the patient has a serious medical condition and the physician's determination whether the medical use of marijuana is appropriate. A "recommendation" (written authorization) from the attending physician must be submitted and confirmation of that recommendation (usually verbal/phone or fax) by primary caregiver is required. The attached definitions along with the associated legal documents will aide in clarifying the intricacies of this subject.

DISCUSSION

When a proposed use is not specifically listed in Table 2-2, Title 22 provides a process by which the department makes a determination on where a use will be permitted. Section 22.06.030 provides that a land use that is not listed in Table 2-2 or is not shown in a particular land use category is not allowed, except...

1. Where a proposed land use is not specifically listed in Table 2-2, the Director will review the proposed use where requested to do so by letter, and based upon the characteristics of the use, determine whether any of the listed uses is equivalent to that proposed.
2. Upon a written determination by the Director that a proposed unlisted use is equivalent in its nature and intensity to a listed use, the proposed use will be treated in the same manner as listed use in determining where it is allowed, what permits are required, and what standards affect its establishment.
3. Determination that specific unlisted uses are equivalent to listed uses will be recorded by the Department, and will be considered for incorporation into this Title through amendment as soon as is practical.
4. At the discretion of the Director, allowable use interpretation requests may be forwarded to the Commission for determination. Determinations by the Director may be appealed to the Commission in compliance with Section 22.70.050.
5. If a proposed use is found by the review authority to not be equivalent to any listed use, the proposed use shall be deemed not allowable.

The county Land Use Ordinance, Title 22 Section 22.06.030 contains several land uses types (corresponding definitions in Section 22.08.030) that have aspects of a Medical

Marijuana dispensary. These are each discussed below: Health Care Services, Offices and General Retail/Pharmacies.

- A. **Health Care Services** was the original land use type that staff determined as most similar to and is defined as:

Health Care Services (land use). Service establishments primarily engaged in furnishing medical, mental health, surgical and other personal health services including: medical, dental and psychiatric offices (mental health-related services including various types of counseling practiced by licensed individuals other than medical doctors or psychiatrists, or unlicensed individuals, are included under Offices); medical and dental laboratories; out-patient care facilities; and allied health services. Associations or groups primarily engaged in providing medical or other health services to members are included. Also includes hospitals and similar establishments primarily engaged in providing diagnostic services, extensive medical treatment including surgical and other hospital services; such establishments have an organized medical staff, inpatient beds, and equipment and facilities to provide complete health care. Nursing homes and similar long-term personal care facilities are classified in "Residential Care." (SIC: Group 80)

Health Care Services are allowed in the Commercial Retail (CR) and Office Professional (OP) land use categories).

As described and defined above **Health Care Services** are primarily focused on medical treatment by Physicians. There are no physicians proposed on the premises of the Medical Marijuana dispensary involved with the subject appeal. Physicians making a "recommendation" for the use of Medical Marijuana by their patients must do so off the site of the Medical Marijuana dispensary in accordance California Safety Code Section 11362.5 and 11362.7. The recommendation process is the procedure similar to a prescription that allows qualified patients to acquire the Medical Marijuana.

The definition also states, "Associations or groups primarily engaged in providing medical or other health services to members are included." A large majority of Medical Marijuana dispensaries located in other jurisdictions are membership organizations that are distributing a medical product. However, this section has traditionally applied to physician medical groups and the like.

- B. **Offices** are the second land use type to be considered as are defined as:

Offices (land use): Professional or government offices including: engineering, architectural and surveying services; real estate agencies; non-commercial educational, scientific and research organizations; accounting, auditing and bookkeeping services; writers and artists; advertising agencies; photography and commercial art studios; employment, stenographic, secretarial and word processing services; quick printing, copying and blueprinting services; reporting services; data processing and computer services; management, public relations

and consulting services; detective agencies and similar professional services; attorneys; and counseling services (other than licensed psychiatrists which are included under "Health Care Services"); and government offices including agency and administrative office facilities, and local post offices when located in facilities developed by private parties for occupancy by the postal service or other operator (does not include bulk mailing distribution centers, which are included under "Vehicle and Freight Terminals"). Does not include medical offices (which are allowed under "Health Care Services") or offices that are incidental and accessory to another business or sales activity which is the principal use. Incidental offices are allowed in any land use category as part of an approved principal use.

Offices are allowed in the Commercial Retail (CR), Commercial Service (CS), Office Professional (OP) and Industrial (IND) land use categories.

As described and defined above **Offices** are primarily focused on businesses that offer a variety of services, the majority of which are not medical in nature. In addition, the Health Care Service definition states "mental health-related services including various types of counseling practiced by licensed individuals other than medical doctors or psychiatrists, or unlicensed individuals, are included under Offices."

There are no "Licensed Professionals" or licensing required/available for the establishment of a Medical Marijuana dispensary. Counseling members on Medical Marijuana is a significant component to a dispensary. The counseling is the most time consuming portion of the transaction. The distribution of the Medical Marijuana can be seen as an equally significant component to the service, however the sales portion of the transaction is not significant in the overall time frame. The "**Offices**" use can be considered an appropriate or equivalent category due to the counseling aspect of the service and could be considered a use similar in nature and intensity to a Medical Marijuana dispensary.

Examples that can be considered are an acupuncturist, herbal remedy consultant or a counselor that distributes herbal remedies to their clients. A service such as counseling is performed and an herbal remedy product is purchased. This type of use would be considered an Office use and be all allowed zoning categories.

- C. General Retail** is the third land use type for consideration based upon the similarity to a pharmacy. This is defined as:

General Retail (land use). Retail trade establishments including department stores, variety stores, drug and discount stores, general stores, etc., engaged in retail sales of many lines of new and used merchandise, including: dry goods; apparel and accessories; small wares; sporting goods and equipment; bicycles and mopeds, musical instruments, arts and accessories, Also includes sales of miscellaneous shopping goods such as: books; stationery; jewelry; hobby

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materials, toys and games; cameras and photographic supplies; gifts, novelties and souvenirs; luggage and leather goods; fabrics and sewing supplies; florists and houseplant stores; cigar and newsstands; artists supplies; orthopedic supplies; religious goods handcrafted items (stores for which may include space for crafting operations when such area is subordinate to retail sales); and other miscellaneous retail shopping goods. (SIC: Groups 53, 56, 591-594)

General Retail/Pharmacies are allowed in Commercial Retail (CR) and Commercial Service (CS) land use categories.

As described and defined above **General Retail** establishments are open to the public and distribute a wide variety of goods. Drug stores are listed and more specifically, Pharmacies are part of this use group by way of the Standard Industrial Classification (SIC). This document was developed to classify establishments by type of activity in which they are primarily engaged; for the purpose of facilitating uniformity in categorization by various government agencies and private organizations. Medical Marijuana dispensaries is not

Uses	Land Use Categories/Zoning				
	Office Professional (OP)	Commercial Retail (CR)	Commercial Service (CS)	Industrial (IND)	Public Facilities (PF)
Health Care Service	A	A			
Offices	A	A	A	A	A
General Retail/Pharmacies		A	A		

recognized/listed separately in the SIC document. Pharmacies are predominantly associated with other types of retail stores and are required to have State Licensed Professional dispense all pharmaceuticals (California Board of Pharmacy). Again, there are no "Licensed Professionals" or licensing required/available for the establishment of a Medical Marijuana dispensary.

Where are these uses allowed

The chart below summarizes the Land Use Categories (Zoning) where each of the three uses are allowed.

Symbol Key: **A** -Allowable Blank cell shows the use is- Not Allowable

Note: -None of the uses listed above is allowable in any other zoning category.

In making the decision on interpretation on where the use is allowed, consideration of the allowable land use category (zoning category) is critical.

OTHER JURISDICTIONS

The County of San Luis Obispo is a unique place and the local governments within the county are also unique in their formulation of ordinances and regulations. However, it is valuable to consider what other jurisdictions have accomplished. In brief, according to the City of Morro Bay Planning Staff, Medical Marijuana Dispensaries are allowed by right. They have determined that Medical Marijuana dispensaries (an unlisted use) are equivalent in its nature and intensity to a listed use (pharmacies). Therefore, proposed Medical Marijuana dispensaries will be treated in the same manner as Pharmacies in determining where it is allowed, what permits are required, and what standards affect its establishment. The City of Morro Bay allows Pharmacies and thus Medical Marijuana Dispensaries in the General Commercial Retail (C-1) zoning category. In other zones such as Mixed Commercial Retail and General Office zones a higher-level public hearing permit is required. In contrast, the City of Atascadero processed a zone text change that allowed for establishment and operation of a medical marijuana dispensary in the Commercial Service zone only through a Conditional Use Permit process. The ordinance that was adopted includes specific findings that must be made for approval. The major provisions dealt with distances from schools and residential zones and allow only one dispensary to be established in the City.

Staff has included as attachments, several pages from the State of California Office of County Health Services, DEA and California State Medical Board websites that include case law, Senate Bill and State Health and Safety Code information. Planning staff has coordinated with other staff members from County Health, County Counsel, Sheriff's Department, Ag Commissioner's Office and the District Attorney's Office. However, the legal issues regarding Medical Marijuana still appear to be somewhat complex and conflicting. According to California State law, patients there can legally use marijuana for medical purposes. This is, however, in direct conflict with Federal government laws. Although the State has legalized the use of marijuana for medical reasons there is the threat of Federal Agency's such as the DEA arresting and prosecuting operators of Medical Marijuana Dispensaries in California.

STAFF RECOMMENDATION

Adopt the attached Resolution supporting the interpretation that Medical Marijuana Dispensaries are most similar to Health Care Services as a land use type, based upon the attached findings. Also, determine if there are special siting criteria that should be considered for future incorporation into the ordinance to address number of dispensaries allowed, location, proximity to schools and residential areas, signing, ability for a waiver process to occur regarding a distance requirement due to physical barrier or similar condition that achieves the same purpose, prohibition of subsequent sales or trade by patients.

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Attachments:

Resolution

Excerpts from the S.B. 420 California Health and Safety Code Sections 11362.7 Definitions of "Attending Physician", "Primary Caregiver" and "Qualified Patient"

Compassionate Use Act (Proposition 215)

Full copy of S.B. 420

Copies of website information from: Office of State Attorney General, Medical Board of California, California State Office of County Health Services and U.S. Drug Enforcement Agency (DEA)

City of Morro Bay – Conditions for Issuance of Business License (Medical Marijuana Dispensary)

EXHIBIT A – FINDINGS

- A. A Medical Marijuana Dispensary is considered to an equivalent use to Health Care Services as defined by the county Land Use Ordinance, Title 22 Section 22.08.030, because Medical Marijuana Dispensaries primarily engage in providing medical or other health services to members.
- B. This request for an interpretation of the Land Use Ordinance is not a “project” under the California Environmental Quality Act and therefore does not require an environmental determination.

Excerpts from (Page 13 -Full copy of S.B. 420 attached)- HEALTH AND SAFETY CODE SECTION 11362.7-11362.83:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

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(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

The Compassionate Use Act (Proposition 215)

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.

(2) Nothing in this section shall be construed to supersede legislation prohibiting persons from engaging in conduct that endangers others, nor to condone the diversion of marijuana for nonmedical purposes.

(c) Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes.

(d) Section 11357, relating to the possession of marijuana, and Section 11358, relating to the cultivation of marijuana, shall not apply to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

(e) For the purposes of this section, "primary caregiver" means the individual designated by the person exempted under this section who has consistently assumed responsibility for the housing, health, or safety of that person.

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BILL NUMBER: SB 420 CHAPTERED
BILL TEXT

CHAPTER 875
FILED WITH SECRETARY OF STATE OCTOBER 12, 2003
APPROVED BY GOVERNOR OCTOBER 12, 2003
PASSED THE SENATE SEPTEMBER 11, 2003
PASSED THE ASSEMBLY SEPTEMBER 10, 2003
AMENDED IN ASSEMBLY SEPTEMBER 9, 2003
AMENDED IN ASSEMBLY SEPTEMBER 4, 2003
AMENDED IN ASSEMBLY AUGUST 18, 2003
AMENDED IN SENATE MAY 27, 2003

INTRODUCED BY Senator Vasconcellos
(Principal coauthor: Assembly Member Leno)
(Coauthors: Assembly Members Goldberg, Hancock, and Koretz)

FEBRUARY 20, 2003

An act to add Article 2.5 (commencing with Section 11362.7) to
Chapter 6 of Division 10 of the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 420, Vasconcellos. Medical marijuana.

Existing law, the Compassionate Use Act of 1996, prohibits any physician from being punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes. The act prohibits the provisions of law making unlawful the possession or cultivation of marijuana from applying to a patient, or to a patient's primary caregiver, who possesses or cultivates marijuana for the personal medical purposes of the patient upon the written or oral recommendation or approval of a physician.

This bill would require the State Department of Health Services to establish and maintain a voluntary program for the issuance of identification cards to qualified patients and would establish procedures under which a qualified patient with an identification card may use marijuana for medical purposes. The bill would specify the department's duties in this regard, including developing related protocols and forms, and establishing application and renewal fees for the program.

The bill would impose various duties upon county health departments relating to the issuance of identification cards, thus creating a state-mandated local program.

The bill would create various crimes related to the identification card program, thus imposing a state-mandated local program.

This bill would authorize the Attorney General to set forth and clarify details concerning possession and cultivation limits, and other regulations, as specified. The bill would also authorize the Attorney General to recommend modifications to the possession or cultivation limits set forth in the bill. The bill would require the Attorney General to develop and adopt guidelines to ensure the security and nondiversion of marijuana grown for medical use, as specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that no reimbursement is required by this act for specified reasons.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) On November 6, 1996, the people of the State of California enacted the Compassionate Use Act of 1996 (hereafter the act), codified in Section 11362.5 of the Health and Safety Code, in order to allow seriously ill residents of the state, who have the oral or written approval or recommendation of a physician, to use marijuana for medical purposes without fear of criminal liability under Sections 11357 and 11358 of the Health and Safety Code.

(2) However, reports from across the state have revealed problems and uncertainties in the act that have impeded the ability of law enforcement officers to enforce its provisions as the voters intended and, therefore, have prevented qualified patients and designated primary caregivers from obtaining the protections afforded by the act.

(3) Furthermore, the enactment of this law, as well as other recent legislation dealing with pain control, demonstrates that more information is needed to assess the number of individuals across the state who are suffering from serious medical conditions that are not being adequately alleviated through the use of conventional medications.

(4) In addition, the act called upon the state and the federal government to develop a plan for the safe and affordable distribution of marijuana to all patients in medical need thereof.

(b) It is the intent of the Legislature, therefore, to do all of the following:

(1) Clarify the scope of the application of the act and facilitate the prompt identification of qualified patients and their designated primary caregivers in order to avoid unnecessary arrest and prosecution of these individuals and provide needed guidance to law enforcement officers.

(2) Promote uniform and consistent application of the act among the counties within the state.

(3) Enhance the access of patients and caregivers to medical marijuana through collective, cooperative cultivation projects.

(c) It is also the intent of the Legislature to address additional issues that were not included within the act, and that must be resolved in order to promote the fair and orderly implementation of the act.

(d) The Legislature further finds and declares both of the following:

(1) A state identification card program will further the goals outlined in this section.

(2) With respect to individuals, the identification system established pursuant to this act must be wholly voluntary, and a patient entitled to the protections of Section 11362.5 of the Health and Safety Code need not possess an identification card in order to claim the protections afforded by that section.

(e) The Legislature further finds and declares that it enacts this act pursuant to the powers reserved to the State of California and its people under the Tenth Amendment to the United States Constitution.

SEC. 2. Article 2.5 (commencing with Section 11362.7) is added to Chapter 6 of Division 10 of the Health and Safety Code, to read:

Article 2.5. Medical Marijuana Program

11362.7. For purposes of this article, the following definitions shall apply:

(a) "Attending physician" means an individual who possesses a license in good standing to practice medicine or osteopathy issued by the Medical Board of California or the Osteopathic Medical Board of California and who has taken responsibility for an aspect of the medical care, treatment, diagnosis, counseling, or referral of a patient and who has conducted a medical examination of that patient before recording in the patient's medical record the physician's assessment of whether the patient has a serious medical condition and whether the medical use of marijuana is appropriate.

(b) "Department" means the State Department of Health Services.

(c) "Person with an identification card" means an individual who is a qualified patient who has applied for and received a valid identification card pursuant to this article.

(d) "Primary caregiver" means the individual, designated by a qualified patient or by a person with an identification card, who has consistently assumed responsibility for the housing, health, or safety of that patient or person, and may include any of the following:

(1) In any case in which a qualified patient or person with an identification card receives medical care or supportive services, or both, from a clinic licensed pursuant to Chapter 1 (commencing with Section 1200) of Division 2, a health care facility licensed pursuant to Chapter 2 (commencing with Section 1250) of Division 2, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 (commencing with Section 1568.01) of Division 2, a residential care facility for the elderly licensed pursuant to Chapter 3.2 (commencing with Section 1569) of Division 2, a hospice, or a home health agency licensed pursuant to Chapter 8 (commencing with Section 1725) of Division 2, the owner or operator, or no more than three employees who are designated by the owner or operator, of the clinic, facility, hospice, or home health agency, if designated as a primary caregiver by that qualified patient or person with an identification card.

(2) An individual who has been designated as a primary caregiver by more than one qualified patient or person with an identification card, if every qualified patient or person with an identification card who has designated that individual as a primary caregiver resides in the same city or county as the primary caregiver.

(3) An individual who has been designated as a primary caregiver by a qualified patient or person with an identification card who resides in a city or county other than that of the primary caregiver, if the individual has not been designated as a primary caregiver by any other qualified patient or person with an identification card.

(e) A primary caregiver shall be at least 18 years of age, unless the primary caregiver is the parent of a minor child who is a qualified patient or a person with an identification card or the primary caregiver is a person otherwise entitled to make medical decisions under state law pursuant to Sections 6922, 7002, 7050, or 7120 of the Family Code.

(f) "Qualified patient" means a person who is entitled to the protections of Section 11362.5, but who does not have an identification card issued pursuant to this article.

(g) "Identification card" means a document issued by the State Department of Health Services that document identifies a person authorized to engage in the medical use of marijuana and the person's designated primary caregiver, if any.

(h) "Serious medical condition" means all of the following medical conditions:

(1) Acquired immune deficiency syndrome (AIDS).

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- (2) Anorexia.
- (3) Arthritis.
- (4) Cachexia.
- (5) Cancer.
- (6) Chronic pain.
- (7) Glaucoma.
- (8) Migraine.
- (9) Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis.
- (10) Seizures, including, but not limited to, seizures associated with epilepsy.
- (11) Severe nausea.
- (12) Any other chronic or persistent medical symptom that either:

(A) Substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans with Disabilities Act of 1990 (Public Law 101-336).

(B) If not alleviated, may cause serious harm to the patient's safety or physical or mental health.

(i) "Written documentation" means accurate reproductions of those portions of a patient's medical records that have been created by the attending physician, that contain the information required by paragraph (2) of subdivision (a) of Section 11362.715, and that the patient may submit to a county health department or the county's designee as part of an application for an identification card.

11362.71. (a) (1) The department shall establish and maintain a voluntary program for the issuance of identification cards to qualified patients who satisfy the requirements of this article and voluntarily apply to the identification card program.

(2) The department shall establish and maintain a 24-hour, toll-free telephone number that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of an identification card issued by the department, until a cost-effective Internet Web-based system can be developed for this purpose.

(b) Every county health department, or the county's designee, shall do all of the following:

- (1) Provide applications upon request to individuals seeking to join the identification card program.
- (2) Receive and process completed applications in accordance with

Section 11362.72.

(3) Maintain records of identification card programs.

(4) Utilize protocols developed by the department pursuant to paragraph (1) of subdivision (d).

(5) Issue identification cards developed by the department to approved applicants and designated primary caregivers.

(c) The county board of supervisors may designate another health-related governmental or nongovernmental entity or organization to perform the functions described in subdivision (b), except for an entity or organization that cultivates or distributes marijuana.

(d) The department shall develop all of the following:

(1) Protocols that shall be used by a county health department or the county's designee to implement the responsibilities described in subdivision (b), including, but not limited to, protocols to confirm the accuracy of information contained in an application and to protect the confidentiality of program records.

(2) Application forms that shall be issued to requesting applicants.

(3) An identification card that identifies a person authorized to engage in the medical use of marijuana and an identification card that identifies the person's designated primary caregiver, if any.

The two identification cards developed pursuant to this paragraph shall be easily distinguishable from each other.

(e) No person or designated primary caregiver in possession of a valid identification card shall be subject to arrest for possession, transportation, delivery, or cultivation of medical marijuana in an amount established pursuant to this article, unless there is reasonable cause to believe that the information contained in the card is false or falsified, the card has been obtained by means of fraud, or the person is otherwise in violation of the provisions of this article.

(f) It shall not be necessary for a person to obtain an identification card in order to claim the protections of Section 11362.5.

11362.715. (a) A person who seeks an identification card shall pay the fee, as provided in Section 11362.755, and provide all of the following to the county health department or the county's designee on a form developed and provided by the department:

(1) The name of the person, and proof of his or her residency within the county. (2) Written documentation by the attending physician in the person's medical records stating that the person has been diagnosed with a serious medical condition and that the medical use of marijuana is appropriate.

(3) The name, office address, office telephone number, and California medical license number of the person's attending physician.

(4) The name and the duties of the primary caregiver.

(5) A government-issued photo identification card of the person and of the designated primary caregiver, if any. If the applicant is a person under 18 years of age, a certified copy of a birth certificate shall be deemed sufficient proof of identity.

(b) If the person applying for an identification card lacks the capacity to make medical decisions, the application may be made by the person's legal representative, including, but not limited to, any of the following:

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- (1) A conservator with authority to make medical decisions.
- (2) An attorney-in-fact under a durable power of attorney for health care or surrogate decisionmaker authorized under another advanced health care directive.
- (3) Any other individual authorized by statutory or decisional law to make medical decisions for the person.
- (c) The legal representative described in subdivision (b) may also designate in the application an individual, including himself or herself, to serve as a primary caregiver for the person, provided that the individual meets the definition of a primary caregiver.
- (d) The person or legal representative submitting the written information and documentation described in subdivision (a) shall retain a copy thereof.

11362.72. (a) Within 30 days of receipt of an application for an identification card, a county health department or the county's designee shall do all of the following:

- (1) For purposes of processing the application, verify that the information contained in the application is accurate. If the person is less than 18 years of age, the county health department or its designee shall also contact the parent with legal authority to make medical decisions, legal guardian, or other person or entity with legal authority to make medical decisions, to verify the information.

- (2) Verify with the Medical Board of California or the Osteopathic Medical Board of California that the attending physician has a license in good standing to practice medicine or osteopathy in the state.

- (3) Contact the attending physician by facsimile, telephone, or mail to confirm that the medical records submitted by the patient are a true and correct copy of those contained in the physician's office records. When contacted by a county health department or the county's designee, the attending physician shall confirm or deny that the contents of the medical records are accurate.

- (4) Take a photograph or otherwise obtain an electronically transmissible image of the applicant and of the designated primary caregiver, if any.

- (5) Approve or deny the application. If an applicant who meets the requirements of Section 11362.715 can establish that an identification card is needed on an emergency basis, the county or its designee shall issue a temporary identification card that shall be valid for 30 days from the date of issuance. The county, or its designee, may extend the temporary identification card for no more than 30 days at a time, so long as the applicant continues to meet the requirements of this paragraph.

- (b) If the county health department or the county's designee approves the application, it shall, within 24 hours, or by the end of the next working day of approving the application, electronically transmit the following information to the department:

- (1) A unique user identification number of the applicant.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(c) The county health department or the county's designee shall issue an identification card to the applicant and to his or her designated primary caregiver, if any, within five working days of approving the application.

(d) In any case involving an incomplete application, the applicant shall assume responsibility for rectifying the deficiency. The county shall have 14 days from the receipt of information from the applicant pursuant to this subdivision to approve or deny the application.

11362.735. (a) An identification card issued by the county health department shall be serially numbered and shall contain all of the following:

(1) A unique user identification number of the cardholder.

(2) The date of expiration of the identification card.

(3) The name and telephone number of the county health department or the county's designee that has approved the application.

(4) A 24-hour, toll-free telephone number, to be maintained by the department, that will enable state and local law enforcement officers to have immediate access to information necessary to verify the validity of the card.

(5) Photo identification of the cardholder.

(b) A separate identification card shall be issued to the person's designated primary caregiver, if any, and shall include a photo identification of the caregiver.

11362.74. (a) The county health department or the county's designee may deny an application only for any of the following reasons:

(1) The applicant did not provide the information required by Section 11362.715, and upon notice of the deficiency pursuant to subdivision (d) of Section 11362.72, did not provide the information within 30 days.

(2) The county health department or the county's designee determines that the information provided was false.

(3) The applicant does not meet the criteria set forth in this article.

(b) Any person whose application has been denied pursuant to subdivision (a) may not reapply for six months from the date of denial unless otherwise authorized by the county health department or the county's designee or by a court of competent jurisdiction.

(c) Any person whose application has been denied pursuant to subdivision (a) may appeal that decision to the department. The county health department or the county's designee shall make available a telephone number or address to which the denied applicant can direct an appeal.

11362.745. (a) An identification card shall be valid for a period of one year.

(b) Upon annual renewal of an identification card, the county health department or its designee shall verify all new information and may verify any other information that has not changed.

(c) The county health department or the county's designee shall transmit its determination of approval or denial of a renewal to the department.

11362.755. (a) The department shall establish application and renewal fees for persons seeking to obtain or renew identification cards that are sufficient to cover the expenses incurred by the department, including the startup cost, the cost of reduced fees for Medi-Cal beneficiaries in accordance with subdivision (b), the cost of identifying and developing a cost-effective Internet Web-based system, and the cost of maintaining the 24-hour toll-free telephone number. Each county health department or the county's designee may charge an additional fee for all costs incurred by the county or the county's designee for administering the program pursuant to this article.

(b) Upon satisfactory proof of participation and eligibility in the Medi-Cal program, a Medi-Cal beneficiary shall receive a 50 percent reduction in the fees established pursuant to this section.

11362.76. (a) A person who possesses an identification card shall:

(1) Within seven days, notify the county health department or the county's designee of any change in the person's attending physician or designated primary caregiver, if any.

(2) Annually submit to the county health department or the county's designee the following:

(A) Updated written documentation of the person's serious medical condition.

(B) The name and duties of the person's designated primary caregiver, if any, for the forthcoming year.

(b) If a person who possesses an identification card fails to comply with this section, the card shall be deemed expired. If an identification card expires, the identification card of any designated primary caregiver of the person shall also expire.

(c) If the designated primary caregiver has been changed, the previous primary caregiver shall return his or her identification card to the department or to the county health department or the county's designee.

(d) If the owner or operator or an employee of the owner or operator of a provider has been designated as a primary caregiver pursuant to paragraph (1) of subdivision (d) of Section 11362.7, of the qualified patient or person with an identification card, the owner or operator shall notify the county health department or the county's designee, pursuant to Section 11362.715, if a change in the designated primary caregiver has occurred.

11362.765. (a) Subject to the requirements of this article, the individuals specified in subdivision (b) shall not be subject, on that sole basis, to criminal liability under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570. However, nothing in this section shall authorize the individual to smoke or

otherwise consume marijuana unless otherwise authorized by this article, nor shall anything in this section authorize any individual or group to cultivate or distribute marijuana for profit.

(b) Subdivision (a) shall apply to all of the following:

(1) A qualified patient or a person with an identification card who transports or processes marijuana for his or her own personal medical use.

(2) A designated primary caregiver who transports, processes, administers, delivers, or gives away marijuana for medical purposes, in amounts not exceeding those established in subdivision (a) of Section 11362.77, only to the qualified patient of the primary caregiver, or to the person with an identification card who has designated the individual as a primary caregiver.

(3) Any individual who provides assistance to a qualified patient or a person with an identification card, or his or her designated primary caregiver, in administering medical marijuana to the qualified patient or person or acquiring the skills necessary to cultivate or administer marijuana for medical purposes to the qualified patient or person.

(c) A primary caregiver who receives compensation for actual expenses, including reasonable compensation incurred for services provided to an eligible qualified patient or person with an identification card to enable that person to use marijuana under this article, or for payment for out-of-pocket expenses incurred in providing those services, or both, shall not, on the sole basis of that fact, be subject to prosecution or punishment under Section 11359 or 11360.

11362.77. (a) A qualified patient or primary caregiver may possess no more than eight ounces of dried marijuana per qualified patient. In addition, a qualified patient or primary caregiver may also maintain no more than six mature or 12 immature marijuana plants per qualified patient.

(b) If a qualified patient or primary caregiver has a doctor's recommendation that this quantity does not meet the qualified patient's medical needs, the qualified patient or primary caregiver may possess an amount of marijuana consistent with the patient's needs.

(c) Counties and cities may retain or enact medical marijuana guidelines allowing qualified patients or primary caregivers to exceed the state limits set forth in subdivision (a).

(d) Only the dried mature processed flowers of female cannabis plant or the plant conversion shall be considered when determining allowable quantities of marijuana under this section.

(e) The Attorney General may recommend modifications to the possession or cultivation limits set forth in this section. These recommendations, if any, shall be made to the Legislature no later than December 1, 2005, and may be made only after public comment and consultation with interested organizations, including, but not limited to, patients, health care professionals, researchers, law enforcement, and local governments. Any recommended modification shall be consistent with the intent of this article and shall be based on currently available scientific research.

(f) A qualified patient or a person holding a valid identification card, or the designated primary caregiver of that qualified patient or person, may possess amounts of marijuana consistent with this article.

11362.775. Qualified patients, persons with valid identification cards, and the designated primary caregivers of qualified patients and persons with identification cards, who associate within the State of California in order collectively or cooperatively to cultivate marijuana for medical purposes, shall not solely on the basis of that fact be subject to state criminal sanctions under Section 11357, 11358, 11359, 11360, 11366, 11366.5, or 11570.

11362.78. A state or local law enforcement agency or officer shall not refuse to accept an identification card issued by the department unless the state or local law enforcement agency or officer has reasonable cause to believe that the information contained in the card is false or fraudulent, or the card is being used fraudulently.

11362.785. (a) Nothing in this article shall require any accommodation of any medical use of marijuana on the property or premises of any place of employment or during the hours of employment or on the property or premises of any jail, correctional facility, or other type of penal institution in which prisoners reside or persons under arrest are detained.

(b) Notwithstanding subdivision (a), a person shall not be prohibited or prevented from obtaining and submitting the written information and documentation necessary to apply for an identification card on the basis that the person is incarcerated in a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained.

(c) Nothing in this article shall prohibit a jail, correctional facility, or other penal institution in which prisoners reside or persons under arrest are detained, from permitting a prisoner or a person under arrest who has an identification card, to use marijuana for medical purposes under circumstances that will not endanger the health or safety of other prisoners or the security of the facility.

(d) Nothing in this article shall require a governmental, private, or any other health insurance provider or health care service plan to be liable for any claim for reimbursement for the medical use of marijuana.

11362.79. Nothing in this article shall authorize a qualified patient or person with an identification card to engage in the smoking of medical marijuana under any of the following circumstances:

(a) In any place where smoking is prohibited by law.

(b) In or within 1,000 feet of the grounds of a school, recreation center, or youth center, unless the medical use occurs within a residence.

(c) On a schoolbus.

(d) While in a motor vehicle that is being operated.

(e) While operating a boat.

11362.795. (a) (1) Any criminal defendant who is eligible to use marijuana pursuant to Section 11362.5 may request that the court confirm that he or she is allowed to use medical marijuana while he or she is on probation or released on bail.

2) The court's decision and the reasons for the decision shall be stated on the record and an entry stating those reasons shall be made in the minutes of the court.

(3) During the period of probation or release on bail, if a physician recommends that the probationer or defendant use medical marijuana, the probationer or defendant may request a modification of the conditions of probation or bail to authorize the use of medical marijuana.

(4) The court's consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

(b) (1) Any person who is to be released on parole from a jail, state prison, school, road camp, or other state or local institution of confinement and who is eligible to use medical marijuana pursuant to Section 11362.5 may request that he or she be allowed to use medical marijuana during the period he or she is released on parole.

A parolee's written conditions of parole shall reflect whether or not a request for a modification of the conditions of his or her parole to use medical marijuana was made, and whether the request was granted or denied.

(2) During the period of the parole, where a physician recommends that the parolee use medical marijuana, the parolee may request a modification of the conditions of the parole to authorize the use of medical marijuana.

(3) Any parolee whose request to use medical marijuana while on parole was denied may pursue an administrative appeal of the decision. Any decision on the appeal shall be in writing and shall reflect the reasons for the decision.

(4) The administrative consideration of the modification request authorized by this subdivision shall comply with the requirements of this section.

11362.8. No professional licensing board may impose a civil penalty or take other disciplinary action against a licensee based solely on the fact that the licensee has performed acts that are necessary or appropriate to carry out the licensee's role as a designated primary caregiver to a person who is a qualified patient or who possesses a lawful identification card issued pursuant to Section 11362.72. However, this section shall not apply to acts performed by a physician relating to the discussion or recommendation of the medical use of marijuana to a patient. These discussions or recommendations, or both, shall be governed by Section 11362.5.

11362.81. (a) A person specified in subdivision (b) shall be subject to the following penalties:

(1) For the first offense, imprisonment in the county jail for no more than six months or a fine not to exceed one thousand dollars

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(\$1,000), or both.

(2) For a second or subsequent offense, imprisonment in the county jail for no more than one year, or a fine not to exceed one thousand dollars (\$1,000), or both.

(b) Subdivision (a) applies to any of the following:

(1) A person who fraudulently represents a medical condition or fraudulently provides any material misinformation to a physician, county health department or the county's designee, or state or local law enforcement agency or officer, for the purpose of falsely obtaining an identification card.

(2) A person who steals or fraudulently uses any person's identification card in order to acquire, possess, cultivate, transport, use, produce, or distribute marijuana.

(3) A person who counterfeits, tampers with, or fraudulently produces an identification card.

(4) A person who breaches the confidentiality requirements of this article to information provided to, or contained in the records of, the department or of a county health department or the county's designee pertaining to an identification card program.

(c) In addition to the penalties prescribed in subdivision (a), any person described in subdivision (b) may be precluded from attempting to obtain, or obtaining or using, an identification card for a period of up to six months at the discretion of the court.

(d) In addition to the requirements of this article, the Attorney General shall develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996.

11362.82. If any section, subdivision, sentence, clause, phrase, or portion of this article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision, and that holding shall not affect the validity of the remaining portion thereof.

11362.83. Nothing in this article shall prevent a city or other local governing body from adopting and enforcing laws consistent with this article.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

In addition, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for other costs mandated by the state because this act includes additional revenue that is specifically intended to fund the costs of the state mandate in an

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amount sufficient to fund the cost of the state mandate, within the meaning of Section 17556 of the Government Code.